

1 SENATE BILL 178

2 **49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

3 INTRODUCED BY

4 Howie Morales

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10 AN ACT

11 RELATING TO BEHAVIORAL HEALTH; CLARIFYING RESPONSIBILITIES FOR
12 THE INTERSTATE COMPACT ON MENTAL HEALTH AND CIVIL COMMITMENTS.

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 Section 1. Section 11-7-2 NMSA 1978 (being Laws 1969,
16 Chapter 118, Section 2, as amended) is amended to read:

17 "11-7-2. COMPACT COORDINATOR--POWERS AND DUTIES.--

18 Pursuant to the Interstate Compact on Mental Health, the
19 [~~director of the behavioral health services division of the~~
20 ~~human services department~~] administrator of the New Mexico
21 behavioral health institute is designated as the compact
22 administrator and, acting jointly with like officers of other
23 party states, shall promulgate rules and regulations to carry
24 out more effectively the terms of the compact. The compact
25 administrator is authorized, empowered and directed to

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1 cooperate with all departments, agencies and officers of and in
2 the government of this state and its subdivisions in
3 facilitating the proper administration of the compact or of any
4 supplementary agreement entered into by this state under the
5 compact."

6 Section 2. Section 43-1-11 NMSA 1978 (being Laws 1977,
7 Chapter 279, Section 10, as amended) is amended to read:

8 "43-1-11. COMMITMENT OF ADULTS FOR THIRTY-DAY PERIOD.--

9 A. Every adult client involuntarily admitted to an
10 evaluation facility pursuant to Section 43-1-10 NMSA 1978 has
11 the right to a hearing within seven days of admission unless
12 waived after consultation with counsel. If [~~the division~~] a
13 physician or evaluation facility decides to seek commitment of
14 the client for evaluation and treatment, a petition shall be
15 filed with the court within five days of admission requesting
16 the commitment. The petition shall include a description of
17 the specific behavior or symptoms of the client [~~which~~] that
18 evidence a likelihood of serious harm to the client or others
19 and shall include an initial screening report by the evaluating
20 physician individually or with the assistance of a mental
21 health professional or, if a physician is not available, by a
22 mental health professional acceptable to the court. The
23 petition shall list the prospective witnesses for commitment
24 and a summary of the matters to which they will testify.

25 Copies of the petition shall be served on the client and the

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1 client's attorney.

2 B. At the hearing, the client shall be represented
3 by counsel and shall have the right to present evidence on
4 [~~his~~] the client's behalf, including testimony by an
5 independent mental health professional of [~~his~~] the client's
6 own choosing, to cross-examine witnesses and to be present at
7 the hearing. The presence of the client may be waived upon a
8 showing to the court that the client knowingly and voluntarily
9 waives [~~his~~] the right to be present. A complete record of all
10 proceedings shall be made.

11 C. Upon completion of the hearing, the court may
12 order a commitment for evaluation and treatment not to exceed
13 thirty days if the court finds by clear and convincing evidence
14 that:

15 (1) as a result of a mental disorder, the client
16 presents a likelihood of serious harm to [~~himself~~] the client's
17 own self or others;

18 (2) the client needs and is likely to benefit
19 from the proposed treatment; and

20 (3) the proposed commitment is consistent with
21 the treatment needs of the client and with the least drastic
22 means principle.

23 D. Once the court has made the findings set forth in
24 Subsection C of this section, the court shall hear further
25 evidence as to whether the client is capable of informed

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1 consent. If the court determines that the client is incapable
2 of informed consent, the court shall appoint for the client a
3 treatment guardian who shall have only those powers enumerated
4 in Section 43-1-15 NMSA 1978.

5 E. ~~Any~~ An interested person who reasonably believes
6 that an adult is suffering from a mental disorder and presents a
7 likelihood of serious harm to himself or herself or to others,
8 but does not require emergency care, may request the district
9 attorney to investigate and determine whether reasonable grounds
10 exist to commit the adult for a thirty-day period of evaluation
11 and treatment. The applicant may present to the district
12 attorney any medical reports or other evidence immediately
13 available to ~~him~~ the applicant, but shall not be required to
14 obtain a medical report or other particular evidence in order to
15 make ~~such~~ a petition. The district attorney shall act on the
16 petition within seventy-two hours. If the district attorney
17 determines that reasonable grounds exist to commit the adult,
18 ~~he~~ the district attorney may petition the court for a hearing.
19 The court may issue a summons to the proposed client to appear at
20 the time designated for a hearing, which shall be not less than
21 five days from the date the petition is served. If the proposed
22 client is summoned and fails to appear at the proposed time and
23 upon a finding of the court that the proposed client has failed
24 to appear, or appears without having been evaluated, the court
25 may order the proposed client to be detained for evaluation as

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1 provided for in Subsection C of Section 43-1-10 NMSA 1978.

2 F. Any hearing provided for pursuant to Subsection E
3 of this section shall be conducted in conformance with the
4 requirements of Subsection B of this section."

5 Section 3. Section 43-1-12 NMSA 1978 (being Laws 1977,
6 Chapter 279, Section 11, as amended) is amended to read:

7 "43-1-12. EXTENDED COMMITMENT OF ADULTS.--

8 A. ~~[The department]~~ A physician or evaluation
9 facility may file a petition for extended commitment within
10 twenty-one days after the beginning of the thirty-day
11 commitment. The petition ~~[must]~~ shall explain the necessity
12 for extended commitment, specify the treatment ~~[which]~~ that has
13 been provided during the evaluation and ~~[must]~~ include an
14 individual treatment plan for the proposed commitment period.
15 The petition shall ~~[also]~~ list the prospective witnesses for
16 commitment and a summary of the matters to which they will
17 testify. Copies of the petition shall be served on the client
18 and the client's attorney.

19 B. A hearing shall be held upon the petition prior to
20 the expiration of the thirty-day commitment period, at which
21 the client shall have all rights granted to ~~[him]~~ the client
22 under Section ~~[34-2A-10 NMSA 1953]~~ 43-1-11 NMSA 1978 and in
23 addition shall have a right to a trial by a six-person jury, if
24 requested, and to an expeditious appeal, unless waived.

25 C. If, at the conclusion of the hearing, the fact-

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1 finder determines by clear and convincing evidence that the
2 client presents a likelihood of harm to himself or herself or
3 to others, that extended treatment is likely to improve the
4 client's condition and that the proposed extended commitment is
5 consistent with the least drastic means principle, the court
6 shall order commitment of the client for a period not to exceed
7 six months, except that when the client has been committed for
8 two consecutive periods of commitment, any commitment
9 commencing thereafter shall not exceed one year. At the
10 expiration of the commitment order, the client may be detained
11 only after a new commitment hearing, unless waived after
12 consultation with the client's attorney, and entry of a new
13 order for commitment not to exceed six months.

14 D. ~~[Any]~~ A client involuntarily referred for
15 treatment pursuant to this section shall be entitled to a
16 reexamination of the order for ~~[his]~~ the client's involuntary
17 referral for treatment on ~~[his]~~ the client's own petition, or
18 that of ~~[his]~~ the client's legal guardian, parent, spouse,
19 relative or friend, to the district court of the county in
20 which ~~[he]~~ the client resides or is detained. Upon receipt of
21 the petition, the court shall conduct a proceeding in
22 accordance with this section, except that ~~[such]~~ a proceeding
23 shall not be required to be conducted if the petition is filed
24 sooner than sixty days after the issuance of the order for
25 involuntary referral for treatment or sooner than sixty days

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1 after the filing of a previous petition under this subsection.

2 E. Nothing in this section shall limit the right of a
3 client to petition the court for a writ of habeas corpus.

4 F. Nothing in this code shall prohibit a client from
5 seeking voluntary admission under Section [~~34-2A-13 NMSA 1953~~]
6 43-1-14 NMSA 1978.

7 G. No mental health treatment facility is required to
8 detain, treat or provide services to a client when the client
9 does not require such detention, treatment or services."

10 Section 4. Section 43-1-13 NMSA 1978 (being Laws 1977,
11 Chapter 279, Section 12, as amended) is amended to read:

12 "43-1-13. INVOLUNTARY COMMITMENT OF DEVELOPMENTALLY
13 DISABLED ADULTS TO RESIDENTIAL CARE.--

14 A. A guardian appointed pursuant to the Uniform
15 Probate Code may file an application with [~~the department or~~]
16 an evaluation facility seeking residential habilitation
17 services for [~~his~~] the guardian's ward. The application shall
18 set forth the basis for the guardian's belief that residential
19 habilitation is necessary and shall include a copy of pertinent
20 medical and psychological evaluations [~~which~~] that have been
21 completed.

22 B. Upon receipt of an application filed according to
23 Subsection A of this section, the [~~department or~~] evaluation
24 facility may accept the proposed client for a period of
25 evaluation and treatment not to exceed fourteen days. An

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1 evaluation facility shall prepare an [~~individual~~]
2 individualized habilitation plan [~~which~~] that shall be
3 consistent with the least drastic means principle.

4 C. If the habilitation plan recommends residential
5 services, the [~~department or~~] evaluation facility shall file
6 with the court a petition for extended residential placement.
7 Upon receipt of the petition, the court shall appoint an
8 attorney to represent the proposed client. Notice of the
9 hearing scheduled on the petition and a copy of the
10 habilitation plan shall be given to the client, [~~his~~] the
11 client's attorney and [~~his~~] the client's guardian. The
12 petition shall contain a list of the names and addresses of
13 proposed witnesses.

14 D. At the hearing on the petition, the proposed
15 client shall be represented by counsel and shall have the right
16 to present evidence on [~~his~~] the proposed client's behalf,
17 including testimony of a developmental disability professional
18 of [~~his~~] the proposed client's choosing; to cross-examine
19 witnesses; to be present at the hearing; and to trial by a six-
20 person jury, if requested. A complete record of the hearing
21 shall be made. There shall be a right to an expeditious
22 appeal.

23 E. The court shall order residential placement of the
24 proposed client if it is established by clear and convincing
25 evidence that the proposed client has a developmental

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1 disability [~~which~~] that creates an imminent likelihood of
2 serious harm to himself or herself or to others, or the person
3 is so greatly disabled that residential services would be in
4 [~~his~~] the person's best interest and that such residential
5 placement is, in [~~his~~] the person's case, the least drastic
6 means. The court's order of residential placement shall be for
7 a period not to exceed six months. At the expiration of the
8 commitment order, the client may be detained only after a new
9 commitment hearing, unless waived after consultation with the
10 client's attorney, and entry of a new order for commitment not
11 to exceed six months.

12 F. The court shall order [~~that~~] placement [~~which~~]
13 that is least restrictive to the client and may order
14 attendance and participation as a nonresident in habilitation
15 programs conducted at residential or nonresidential facilities.

16 G. [~~Any~~] A client involuntarily referred for
17 habilitation treatment shall be entitled to a reexamination of
18 the order for [~~his~~] the client's involuntary referral for
19 habilitation and treatment on [~~his~~] the client's own petition,
20 or that of [~~his~~] the client's legal guardian, parent, spouse,
21 relative or friend, to the district court of the county in
22 which [~~he~~] the client resides or is detained. Upon receipt of
23 the petition, the court shall conduct or cause to be conducted
24 by a special commissioner a proceeding in accordance with this
25 section, except that [~~such~~] a proceeding shall not be required

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1 to be conducted if the petition is filed sooner than sixty days
2 after the issuance of the order for involuntary referral for
3 habilitation and treatment or sooner than sixty days after the
4 filing of a previous petition under this subsection.

5 H. Nothing in this section shall limit the right of a
6 client to petition the court for a writ of habeas corpus.

7 I. No developmental disabilities treatment or
8 habilitation facility is required to detain, treat or provide
9 services to a client when the client does not appear to require
10 [~~such~~] detention, treatment or habilitation."

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